

MANISH ATMA and HITESH PATEL,

Plaintiffs,

v.

**THE IRON THUNDER SALOON & GRILL,
INC. and DANIELLE DUNN,**

Defendants.

THIS MATTER IS BEFORE THE COURT on the “Atma’s Motion To Dismiss” (Document No. 30). This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b) and immediate review of this motion is appropriate. Having carefully considered the record, the motion, and applicable authority, the undersigned finds that the pending motion should be denied as moot.

Plaintiff Manish Atma (“Plaintiff” or “Atma”) filed the pending “...Motion To Dismiss” (Document No. 30) on May 5, 2011, seeking dismissal of the counterclaim for defamation in Defendant Iron Thunder Saloon & Grill, Inc.’s “... Answer To Second Amended Complaint And Counterclaim” (Document No. 29). Specifically, Atma contends that the counterclaim for defamation “is time barred and should be dismissed for failure to state a claim upon which relief can be granted.” (Document No. 31, p.2).

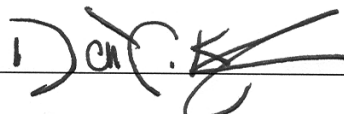
On May 17, 2011, Defendant Iron Thunder Saloon & Grill, Inc. filed its “...Amended Answer To Second Amended Complaint And Amended Counterclaim” (Document No. 33). Defendant’s amended answer and counterclaim explicitly revises its claim of defamation.

As this Court has previously noted in this matter, a motion to dismiss may be denied as moot

where an amended pleading supersedes the original. (Document No. 27, pp.5-6; see also, Document No. 17, pp.2-3). Based on the foregoing, the undersigned finds that Plaintiff Atma's motion to dismiss the counterclaim of Defendant Iron Thunder Saloon & Grill, Inc. should be denied as moot, without prejudice to Plaintiff to re-file such motion regarding Defendant's amended counterclaim.

IT IS, THEREFORE, ORDERED that "Atma's Motion To Dismiss" (Document No. 30) is **DENIED AS MOOT**.

Signed: June 6, 2011



David C. Keesler
United States Magistrate Judge

